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**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

URSULA BYRAM, S.B. by and  
through guardian ad litem TIMOTHY  
BYRAM, N.B. by and through guardian  
ad litem TIMOTHY BYRAM, and A.B.  
by and through guardian ad litem  
KAITLYN HUMENCHUK,  
individually and as successors-in-  
interest to Everett Byram,

Plaintiffs,

v.

COUNTY OF LOS ANGELES,  
BLAKE RUNGE, and BRENDA  
ALCANTARA,

Defendants.

Case No. 2:23-cv-09285-KS

[Assigned to Hon. Karen L. Stevenson,  
Courtroom 580]

**JOINT NOTICE OF MOTION AND  
MOTION IN *LIMINE* NO. 5 TO  
EXCLUDE TOXICOLOGY REPORT  
AND EVIDENCE OF BLOOD  
ALCOHOL LEVEL(MOVING  
PARTY: PLAINTIFFS)**

*[Filed Concurrently with the  
Declaration of Cooper Alison-Mayne  
in Support of JMIL No. 5, and  
[Proposed] Order]*

Final Pretrial Conference/Hearing on  
Motions in *Limine*

Date: January 21, 2025

Time: 10:00 a.m.

Courtroom: 580

Trial Date: February 10, 2025

1 TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF  
2 RECORD:

3 PLEASE TAKE NOTICE THAT on January 21, 2025, at 10:00 a.m. in  
4 Courtroom "580" of the above entitled court, located at 255 E. Temple Street, Los  
5 Angeles, California 90012, Plaintiffs URSULA BYRAM, S.B. by and through  
6 guardian ad litem TIMOTHY BYRAM, N.B. by and through guardian ad litem  
7 TIMOTHY BYRAM, and A.B. by and through guardian ad litem KAITLYN  
8 HUMENCHUK, individually and as successors-in-interest to Everett Byram,  
9 (collectively "Plaintiffs") will move this Court, *in Limine* for an Order precluding  
10 Defendants COUNTY OF LOS ANGELES, DEPUTY BLAKE RUNGE and  
11 DEPUTY BRENDA ALCANTARA (collectively "Defendants") and their counsel  
12 from introducing at trial any evidence, references to evidence, witness testimony,  
13 contentions, or cross-examination relating to psychiatric medications and blood  
14 alcohol content found in Decedent Everett Byram's post-mortem toxicology report.  
15 Plaintiffs bring this Motion on the grounds that such evidence is irrelevant to the  
16 issues to be tried as Defendant Runge had no knowledge of this information at the  
17 time of the incident; it has no probative value as to either liability or damages; and  
18 such evidence would only serve to unfairly prejudice the jury, confuse the issues,  
19 and deflect the factfinders' attention from the matters truly at issue in this case.

20 Plaintiffs further move this Court to instruct Defendants and their counsel and  
21 to require them to advise all witnesses:

- 22 1. Not to attempt to convey to the jury, directly or indirectly, any information  
23 regarding Decedent's post-mortem toxicology results, including any evidence  
24 of psychiatric medications or blood alcohol content, without first obtaining  
25 permission of the Court outside the presence and hearing of the jury;
- 26 2. Not to make any reference to the fact that this Motion has been filed; and
- 27 3. To warn and caution each of Defendants' witnesses to strictly follow the same  
28 instructions.

This motion is made following compliance with the meet and confer

1 requirements of *Local Rule* 7-3. (See Declaration of Cooper Alison-Mayne in  
2 Support of Motion in *Limine* No. 5.) This Motion is based upon the Memorandum of  
3 Points and Authorities served herewith, upon the pleadings and papers on file  
4 herein, Declaration of Cooper Alison-Mayne in Support of Motion in *Limine* No. 5,  
5 and upon such other and further oral argument and evidence as may be presented at  
6 the hearing on this Motion.

7  
8 Respectfully submitted,

9 DATED: December 10, 2024,

**LAW OFFICES OF DALE K. GALIPO**

10 /s/ Cooper Alison-Mayne

11 Dale K. Galipo

12 Cooper Alison-Mayne

13 *Attorney for Plaintiffs*  
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1           **PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES**

2           This civil rights and state tort lawsuit arises out of the fatal shooting of  
3 Everett Byram by Los Angeles Sheriff's Department Deputy Blake Runge. The key  
4 issue in this case is whether the shooting was excessive and unreasonable. Evidence  
5 pertaining to psychiatric medications and blood alcohol content (BAC) found in Mr.  
6 Byram's toxicology report after his death has no bearing on whether the shooting  
7 was excessive and unreasonable and does not make the material disputed facts more  
8 or less probable. Furthermore, the information that Plaintiffs seek to exclude is  
9 highly prejudicial and is too speculative to be relevant for a damages inquiry. Thus,  
10 Plaintiffs respectfully request an order excluding any evidence of psychiatric  
11 medications and elevated blood alcohol content found in Decedent Everett Byram's  
12 toxicology report conducted after his death.

13           Federal Rules of Evidence, Rule 401 defines "relevant evidence" as evidence  
14 having any tendency to make the existence of any fact that is of consequence to the  
15 determination of the action more probable or less probable than if would be without  
16 the evidence. The main contention of the Defendants is that the shooting was  
17 reasonable because they claim that Deputy Runge faced an immediate threat from  
18 Byram, justifying the use of lethal force. On the other hand, the Plaintiffs contend  
19 that the shooting was not reasonable based on the totality of circumstances at the  
20 time of the incident.

21           Whether Byram had psychiatric medications in his system or an elevated  
22 BAC at the time of death is entirely irrelevant to this dispute and would only serve  
23 to confuse the jury rather than aid them in determining the critical factual questions  
24 in this case, as this information was unknown to Deputy Runge at the time of the  
25 shooting.

26           Any evidence of psychiatric medications or BAC in Byram's system should  
27 also be excluded under Rule 403. See generally, Gregory v. Oliver, 2003 WL  
28 1860270, at \*2 (N.D. Ill. Apr. 9, 2003) (granting a motion in limine in an excessive  
force case to exclude drug paraphernalia the officers discovered after the alleged

1 excessive force occurred, because it was irrelevant and unduly prejudicial under  
2 Rule 403); Id. at \*1 ("In today's climate, any evidence as to a litigant's use of drugs  
3 has an obvious potential for being extraordinarily prejudicial—for creating the  
4 prospect of deflecting the factfinders' attention from the matters that are really at  
5 issue in the case to everyone's universally-shared concerns as to the problems that  
6 drug usage is creating for our society."). The Ninth Circuit has explained that  
7 evidence of a decedent's drug or alcohol use has "marginal, if any probative value as  
8 to damages, and none as to liability." *Est. of Diaz v. City of Anaheim*, 840 F.3d 592,  
9 603 (9th Cir. 2016). Evidence of psychiatric medications or blood alcohol content is  
10 highly likely to mislead or confuse the jury into reaching a verdict that reflects its  
11 consideration of Mr. Byram's mental state or intoxication as a reason justifying the  
12 use of force.

13 This evidence is not relevant to Plaintiffs' claim to survival damages for the  
14 violations of Byram's civil rights. Plaintiffs' excessive force claim focuses on the  
15 circumstances surrounding the use of deadly force and the nature of Byram's pain  
16 and suffering before his death. As the Ninth Circuit articulated in *Diaz*, *supra*, this  
17 evidence is not relevant to Plaintiffs' claim for damages based on wrongful death.  
18 840 F.3d at 603. Any effect Byram's psychiatric medications or blood alcohol  
19 content may have had on his life outcomes is purely speculative.

20 For the foregoing reasons, Plaintiffs respectfully request an order excluding  
21 any evidence of psychiatric medications and blood alcohol content found in  
22 Decedent Everett Byram's post-mortem toxicology report.

23 Respectfully submitted,

24 DATED: December 10, 2024,

**LAW OFFICES OF DALE K. GALIPO**

25 /s/ Cooper Alison-Mayne

26 Dale K. Galipo

27 Cooper Alison-Mayne

28 *Attorney for Plaintiffs*

**DEFENDANTS' MEMORANDUM OF POINTS AND  
AUTHORITIES IN OPPOSITION**

**I. DECEDENT'S TOXICOLOGY REPORT AND BLOOD ALCOHOL  
LEVEL IS RELEVANT AND PROBATIVE**

Evidence is relevant and admissible if it tends to make the existence of a fact of consequence more or less probable. *Fed. R. Evid.* 401, 402. Evidence also is admissible when it is relevant to a material issue in the case and is allowed under FRE 404(b); *United States v. Abel*, 469 U.S. 45, 49 (1984); *see also United States v. Takahashi*, 205 F.3d 1161, 1164 (2000). Relevant evidence may be excluded if its probative value is substantially outweighed by unfair prejudice. *Fed. R. Evid.* 403. “[E]vidence is excludable only if it is ‘unfairly’ prejudicial, in that it has ‘an undue tendency to suggest decision on an improper basis.’” *Old Chief v. U.S.*, 519 U.S. 172, 193 (1977), *citing Dollar v. Long Mfg., N. C., Inc.*, 561 F.2d 613, 618 (5th Cir. 1977) [ “[U]nfair prejudice as used in Rule 403 is not to be equated with testimony simply adverse to the opposing party. Virtually all evidence is prejudicial or it isn't material. The prejudice must be ‘unfair’”].

The parties dispute Everett Byram's behavior prior to the use of force. Accordingly, evidence of Everett Byram's toxicology results showing alcohol in his system and an overuse of psychiatric medicine is relevant and admissible. Such evidence will assist the jury in resolving the factual disputes and in determining credibility. *See Boyd v. City & County of San Francisco*, 576 F.3d 938, 944 (9th Cir. 2009) (evidence that Decedent was on drugs was relevant and admissible in an excessive force case because it made assertions that Decedent was acting erratically more probable); *Luchtel v. Hagemann*, 623 F.3d 975, 980 (9th Cir. 2010) (citing hospital medical report showing that plaintiff was under the influence of crack cocaine in considering whether the police officers used a reasonable amount of force while arresting her).

1 Further, the use of alcohol and overuse psychiatric medicine is directly related  
2 to an individual's decision-making and rationality of thought. What would be  
3 expected behavior of someone not under the influence is completely different from  
4 someone that is impaired, erratic and experiencing the effects of alcohol and  
5 psychiatric medicine. It is uncontroverted that responding deputies were confronted  
6 by an individual that was under the influence of alcohol and psychiatric medicine as  
7 the toxicology record clearly demonstrates. What would Plaintiffs do if the  
8 toxicology report in this case revealed that Deputy Runge was the one with a  
9 positive toxicology for alcohol and an overuse of psychiatric medicine? Would that  
10 information be excluded? Both the Deputy's and Decedent's actions and behavior are  
11 on trial here, and one is just as relevant as the other.

12 It also should be allowed under FRE 403 because alcohol does not have a  
13 grossly negative stigma. Any prejudice is minimal, and it is certainly not unfair  
14 prejudice that will have an “undue tendency to suggest [a] decision on an improper  
15 basis.” On the contrary, if this evidence is excluded, Defendants will be severely  
16 prejudiced as the jury's decision will not be based on all the relevant, material facts,  
17 and Defendants will be deprived of a fair trial. Moreover, any potential prejudice to  
18 Plaintiff can be cured by a limiting instruction.

## 19 **II. CONCLUSION**

20 Based on the foregoing, the Court should deny Plaintiffs' Motion in Limine  
21 No. 3 exclude toxicology report and evidence of blood alcohol level.  
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